

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 23.6.106, pertaining to tow truck) PROPOSED AMENDMENT
complaint resolution)

TO: All Concerned Persons

1. On August 26, 2008, at 1:00 p.m., a public hearing will be held to consider the proposed amendment of the above-stated rule in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 12, 2008, to advise us of the nature of the accommodation that you need. Please contact Jesse Laslovich, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail jlaslovich@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

23.6.106 TOW TRUCK COMPLAINT RESOLUTION COMMITTEE –
JURISDICTION AND PROCEDURE (1) remains the same.

(2) The committee shall have the authority to act as a hearing examiner in contested cases with the powers set forth in 2-4-611, MCA., ~~and shall have the authority to issue recommended proposals for decision as discussed in 2-4-621, MCA. The attorney general shall review the recommended proposal and make the final decision.~~

(3) Complaints must be signed and submitted in writing to the Office of Consumer Protection (OCP) in the Attorney General's Office, 2225 Eleventh Avenue, P.O. Box 200151, Helena, MT 59620-0151, or a member of the committee. The complaint must identify the tow truck operator against whom it is filed and include a description of the underlying facts giving rise to the complaint.

(4) After receiving a written complaint, the OCP shall forward a copy of the complaint to the tow truck operator complained of, who has 20 days to respond in writing to the OCP. If the tow truck operator fails to respond within 20 days, beginning on the 21st day, the tow truck operator shall be suspended from participating in the state and local rotation system for a period of 30 days. The tow truck operator shall remain suspended from participating in the state and local rotation system until the tow truck operator responds to the OCP.

(5) The OCP will forward the complaint(s) to the full committee if:

(a) the tow truck operator fails to respond to the complaint;

- (b) the tow truck operator lacks the proper registration, licensing, endorsements, equipment, or any other requirement provided by law;
- (c) the OCP is unable to resolve the complaint; or
- (d) the OCP believes it to be in the best interests of the public.
- (6) If the complaint is forwarded to the committee, the committee will:
 - (a) through (e) remain the same.
 - (f) provide any witness the committee deems relevant an opportunity to address the committee; and
 - (g) keep a tape recording of the hearing that may be copied or transcribed at the request of any person who pays the cost thereof; and
 - ~~(h) issue a written proposal for decision which may be contested before the attorney general pursuant to 2-4-621, MCA.~~
- (7) With a majority vote, the committee may:
 - (a) dismiss the complaint; or
 - (b) treat the matter as a contested case under 2-4-611, MCA.
 - ~~(5) (8)~~ (8) If after a hearing, the committee finds the complaint to have merit, the committee may in its recommended proposal:
 - (a) through (d) remain the same.
 - (9) The committee's decision is subject to judicial review under 2-4-702, MCA.

AUTH: 61-8-912, MCA
IMP: 61-8-908, 61-8-912, MCA

REASON: As currently written, the rules provide that a complaint be filed with a member of the committee. Since the rules were adopted, the only member who has received complaints is the chairman of the committee. The Office of Consumer Protection (OCP) handles numerous general complaints from consumers and is able to resolve many of them on an informal basis. The department believes that OCP should receive complaints about tow truck operators, just like it does on every other consumer issue facing consumers. If OCP cannot resolve the complaint informally, OCP can schedule a hearing for the committee members, resulting in cases being heard in a timely manner. At present, the complaint process is not timely.

The department also believes that there needs to be an incentive for tow truck operators to respond to a written complaint, which is why the rules propose to suspend an operator from the state and local rotation systems for 30 days if a response is not received within 20 days of receiving the complaint. Without a response from the tow truck operator, the committee is unable to resolve complaints in a timely and effective manner. The department believes that the possibility of permanent suspensions from the state and local rotation systems for continued failure to respond will result in most, if not all, of the complaints receiving a response.

The proposed rules also make the committee's decision final because the department believes that judicial review under 2-4-702, MCA, is an effective way for the aggrieved party to seek review. The committee members should make the final decision because they listen to all of the witnesses and review all of the evidence at the hearing, after which they are in the best position to determine an appropriate

resolution. The proposed rules provide for finality for the interested parties while still giving the party adversely affected by the decision the opportunity to appeal the decision to district court.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Jesse Laslovich, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail jlavlovich@mt.gov, and must be received no later than 5:00 p.m. on August 28, 2008.

5. Jesse Laslovich, Assistant Attorney General, Department of Justice, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice is available through the department's web site at <http://doj.mt.gov/resources/administrativerules.asp>. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Attorney General's office, or may be made by completing a request form at any rules hearing held by the department. A copy of the interested persons request form may be printed from the Department of Justice's web site at <http://doj.mt.gov/resources/administrativerules.asp>, and mailed to the rule reviewer.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

By: /s/ Mike McGrath
MIKE McGRATH
Attorney General
Department of Justice

/s/ J. Stuart Segrest
J. STUART SEGREST
Rule Reviewer

Certified to the Secretary of State on July 21, 2008.